

**STATE OF CALIFORNIA  
DEPARTMENT OF WATER RESOURCES  
3310 EL CAMINO AVE  
SACRAMENTO, CA 95814**

**DIVISION 2, CHAPTER 4.5, SECTIONS 570-576, OF THE CALIFORNIA CODE OF  
REGULATIONS**

**REGARDING FINANCIAL ASSISTANCE FOR FLOOD MANAGEMENT PROJECTS  
AND SMALL FLOOD MANAGEMENT PROJECTS**

**SUPPLEMENTAL STATEMENT OF REASONS**

**A. Rulemaking Authority**

Assembly Bill No. 1788 (AB 1788) was approved by the Governor on September 30, 2010. The legislation amends the requirements and contribution level for state participation in flood management projects authorized or approved beginning January 1, 2002. AB 1788 revises Water Code Section 12585.7.

**B. Purpose of Regulatory Action**

The proposed regulations are necessary to update the evaluation process for determining the increase in State cost-share for disadvantaged communities on a consistent basis, to provide supplemental rules for meeting objectives previously defined in regulations, and to identify relevant terms and definitions for clarity.

**C. Supplemental Explanation of Significant Regulatory Changes:**

Section 571 (a) is amended to remove the definition for average family size. This definition has been removed because the average family size is no longer used as part of the calculation for disadvantaged community cost share increase and no longer applies to the cost sharing formulas described in the regulations. The term Median Annual Household Income and variations of this term are now used by the Department of Water Resources (DWR) to determine cost share for disadvantaged communities. Average family size is no longer applicable to the regulations and should therefore be removed to be consistent with current and future cost share calculations by DWR.

Section 571 (b) through 571 (f) are amended to add terms and definitions which better describe and clarify cost sharing formulas described in the regulations. The following statement is added to clarify several of these definitions;

“This data can be obtained from the US Census Bureau or from a vendor of updated census-based data acceptable to the Department or Board.”

DWR has broadened its acceptance of other forms of census data from that of the US Census Bureau. This is because small projects may benefit areas smaller than the census blocks utilized by the US Census Bureau. Using income information for only the benefited area allows a more accurate depiction of the benefited areas disadvantaged status and therefore the amount of cost share savings the community is entitled to. Also, US Census Bureau Census data for some areas can be outdated and may not take into account the most recent economic climate for the area. Accepting census data from sources outside the US Census Bureau may

portray a more accurate depiction of the economic status of an area benefited by a flood protection project.

Section 571 (i) and (j) are amended to add terms and definitions to clarify Disadvantaged Area and Disadvantaged Household Income. These terms update the old standard of a disadvantaged community or income being a community or income which is less than 120 percent of the national poverty level. It was determined that there are no such communities existing in California that fit this profile. The statute enacted by AB 1788 updated this to 80 percent of the median household income so that communities in California can qualify for the disadvantaged benefits in cost sharing. The regulations are subsequently being updated for consistency with the statute.

Section 571 (i) and (j) are amended to remove terms for estimated nonfederal capital cost and estimated total capital cost. These terms and definitions are no longer used in cost sharing with the State of California DWR and are no longer accurate. For clarity and consistency, these terms were deleted and replaced with the new terms "Nonfederal Capital Cost" in Section 571(n) and "Total Capital Cost" in Section 571(x), which are the currently used terms and are more accurate. Basically, the word "estimated" was removed from the terms and an updated definition was provided in order to be consistent with current documents used by both DWR and Federal Sponsors.

Section 571 (n) was deleted to remove the term "Median household income". This term and definition were removed because they were insufficient to explain the true application of household income to cost sharing formulas. Terms were added as Section 571 (b) and (f) in order to better clarify the intent of the use of household income information when calculating disadvantaged status.

Section 571 (o)(4) was added to incorporate the "Combination Objective". This term was added to clarify the fact that terms listed under part (o) as (1), (2), and (3) can be used in conjunction with one another. Prior to the addition of this term, the combined use of these objectives was not clearly defined. The addition provides clarity and completeness to the definition of "Objective". The addition of the Combination Objective is necessary to explain the method which is used by DWR to determine state cost share enhancement. This information is required in order to clarify the determination of state cost share for enhancements and remove unwarranted discrepancies in cost share increases between funding recipients.

Section 571 (u) and (v) was added to incorporate the term "State Facility". State facility is an existing term in the regulation text which was not previously defined. The definition was needed to clarify exactly what the State considers as a state facility as it pertains to cost sharing on flood management projects. Additional information was provided to describe a State Transportation Facility which would be considered for use in cost share increase. The State does not pay additional funds if the benefited facility has no significant state interest even if the facility is owned by the State. This explains that the benefit to the facility must be of great enough interest to the state to substantiate an increased investment of state funds. This information clarifies that not all land owned by the state can contribute to a cost share enhancement through the state facilities objective. It explains that a review is required to determine if land owned by the state can be considered toward cost share enhancement for a community. Rail lines and ship channels are added to the description of State Transportation Facilities because the State operates and maintains some of these facilities. Benefiting these facilities may qualify a funding recipient increased state cost share through the State Facilities Objective. It is in the best interest of the State and its citizens to protect and maintain

transportation facilities. Providing increased state funding for projects which benefit rail lines and ship channels supports the overall goals of the State and DWR.

Section 571 (x) adds the term "Total Capital Cost". For an explanation of reasoning, see discussion on removed Section 571 (i) and (j).

Section 572 (g) added a description of in which instances DWR or the Board will recommend a State Cost Share. Part (1) is a necessary addition to state and clarify that a DWR program will not count funding from another DWR program as part of the local cost share. This prevents local entities from double-dipping into state funds for the same work. Part (3) is required to clarify when a cost share determination is finalized and when updates can be made. Part (4) describes the ability for legislature, DWR or the Board to update the cost share percentage based on actual expenses. Due to the volatility of the State's economic status, project's actual expenditures may vary from the planned expenditures. A change in expenditure amount will affect the cost share enhancement afforded to the project. This explanation was added to the regulations to ensure that changes made to cost shares based on actual expenses will be transmitted to the legislature in the appropriate manner.

Section 573 part (b)(4)(A) and (b)(4)(B) were added to describe and clarify the Combination Objective. For an explanation of the necessity for the Combination Objective see the discussion on Section 571 (o)(4).

Section 574 (b) was updated to remain consistent with new terms and definitions added to the regulations. For a discussion on these updated terms and definitions see the description for the deleted sections 571 (i) and (j).

Section 574 (c) was clarified with additional text. Text was removed and added so that the regulations remain consistent with Water Code Section 12585.7. For an explanation of why household income percentages were updated in the regulations, see the description for the added sections 571 (i) and (j).

Section 574 (e)(2) added text to explain the conditions under which acquisition of property is eligible for a state cost share enhancement with respect to open space. This section explains that newly acquired land should be restricted to use as open space and updates the terms of open space so they are consistent with current DWR practices. This prevents an agency from accepting funding for acquisition of open space and later changing the property zoning to something other than open space. This explains that the intent of the cost share increase is that open space purchased using state funds should remain open space.

Section 574 (e)(4), section 574 (e)(4)(C) removed, section 574 (e)(4)(C) added, and section 574 (e)(4)(D) updated, were updated for reasons explained in the description for the added sections 571 (i) and (j) and 571 (a). The second paragraph of the updated section 574 (e)(4)(D) was added to the regulation text to further clarify the terms of calculating a state cost share increase using the disadvantaged community enhancement. For an explanation of the use of California Median Annual Household Income from census data, see the description for Section 571 (b) through (f).

Section 574 (e)(6) was added to explain the Combination Objective with respect to significant contributions. For an explanation of the necessity of the Combination Objective, see the description for added section 571 (o).

Section 575 introductory paragraph was updated to better describe the recommended percentage increase for the objective enhancements. Therefore, reference to the multipurpose objective was removed and replaced with information on the new objectives used by DWR to determine incremental state cost share increases for objective enhancements. This information is required in order to clarify the determination of state cost share for enhancements and remove unwarranted discrepancies in cost share increases between funding recipients. This paragraph is needed to explain that cost share increases are increases above the baseline State Cost Share. This point will eliminate confusion associated with baseline cost share and the addition of cost share increases. The paragraph also states that financial contributions to objectives must be above and beyond what is already required for the project. This statement is necessary to emphasize that the state cost share increases are offered for enhancements to the project which are consistent with DWR's objectives. Project activities that are already required for project completion do not count toward a contribution toward an objective. This point is made clear by the inserted text.

Section 575 (e) through (i) were either updated or added into the regulation text in order to clarify and standardize incremental cost share increases for the Combination Objective. Clarifying these incremental state cost share increases will remove unwarranted discrepancies in cost share increases across funding programs within DWR. See the description for Section 571 (o)(4) for the necessity explanation of the Combination Objective.

Section 575 (k) through (n) were updated in order to clarify incremental cost share increases for the State Facilities Objective. This objective enhancement is provided to projects which indirectly or directly benefit an existing state facility identified in Appendix 1. The state will increase its stake in the project because the state is receiving a benefit from the project. Standardizing these incremental state cost share increases will remove unwarranted discrepancies in cost share increases across funding programs within DWR.

Appendix 1 was incomplete and additions have been made to incorporate missing facilities and to identify a complete list of all state facilities which can be benefited for cost share increase.

Regulatory changes not specifically described in this supplemental document are deemed to be non-substantial, self evident, or readily comprehensible.

#### D. Material Relied Upon for Updated Regulations:

- 1) The Guidelines for Establishing Local Agency Cost-Sharing Formulas for Flood Programs and Projects, California Department of Water Resources, dated October 2010, was adopted to comply with Assembly Bill 5, Sec. 26, of the California Water Code Sec. 9625. This document is available on the Internet at [http://www.water.ca.gov/floodsafe/docs/FinalDraft\\_OnlinePosting\\_CostShareFormulaGuidelines.pdf](http://www.water.ca.gov/floodsafe/docs/FinalDraft_OnlinePosting_CostShareFormulaGuidelines.pdf)